

**National Association of Letter Carriers, Branch  
6070 and David Hinesley. Case 10-CB-6410(P)**

January 31, 1995

**DECISION AND ORDER**

BY MEMBERS BROWNING, COHEN, AND  
TRUESDALE

On November 10, 1994, Administrative Law Judge William N. Cates issued the attached decision. The General Counsel filed exceptions and a supporting brief and the Respondent filed an opposition brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

**ORDER**

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

*Lesley Troope, Esq.*, for the General Counsel.  
*Susan Panepento, Esq. (Cohen, Weiss & Simon)*, of New York, New York, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

WILLIAM N. CATES, Administrative Law Judge. The pleaded issue here is whether the Respondent, National Association of Letter Carriers, Branch 6070<sup>1</sup> (the Union), violated Section 8(b)(1)(A) of the Act about May 7, 1994,<sup>2</sup> when allegedly the Union "arbitrarily and capriciously distributed the proceeds of a grievance settlement" with the United States Postal Service (Employer) "among certain of the Employer's employees classified as letter carriers" at the Employer's Tucker, Georgia post office. The Union denies violating the Act.

I presided at the August 31 trial of this case in Atlanta, Georgia, based on a charge filed May 16 by David Hinesley (Hinesley) and the June 29 complaint and notice of hearing (complaint) issued by the Regional Director for Region 10 of the National Labor Relations Board (the Board).<sup>3</sup> Counsel for the General Counsel (Government) and the Union filed briefs which I have carefully considered.

On the basis of the entire record, and my observation of the demeanor of the four witnesses who testified, I will, as hereinafter more fully explained, conclude that the Union did not violate the Act, and I will dismiss the complaint.

<sup>1</sup> I describe the Local Union in the manner by which the Union names itself in the pleadings.

<sup>2</sup> All dates are 1994 unless I specify otherwise.

<sup>3</sup> The record reflects, and I find, that the Board has statutory jurisdiction and that the Union is a statutory labor organization.

**FINDINGS OF FACT**

*A. Background*

The International Union and the Employer have been parties to a collective-bargaining agreement (contract) covering postal letter carriers (carriers), and Branch 6070 is the local union which, under the contract, represents the carriers at the Employer's Tucker, Georgia branch facility for the purpose of collective bargaining.

The dispute in this case dates to 1989 when management at the Tucker post office switched the work of segmenting the mail (sorting by one carrier with delivery by another) from the carrier craft to the clerk craft. Effective October 31, 1989, Alvin R. Price, president of Branch 6070, filed a class action grievance protesting the assignment of segmentation to the clerks. The period of time covered by the grievance runs from October 31, 1989, to March 30, 1993, when the Employer reassigned segmentation to the letter carriers. The grievance demanded that carriers be assigned the work, that management cease and desist from using clerks to perform carriers' work, and that the Employer pay "PTF Letter Carriers adversely affected." Part-time flexibles (PTFs) are letter carriers who are not regular carriers, have no set schedule or route, and have no bidding rights. PTFs are guaranteed 4 hours of work for days when they are scheduled to work, whereas a regular carrier is guaranteed 40 hours a week, has an assigned route, a specific work schedule, and enjoys bidding rights.

When the clerks at Tucker began segmenting, some carriers were adversely affected by the loss of the segmentation work. C. W. "Bill" Wallace, for example, lost his regular route (he successfully bid on another route about 3 weeks later), and this had a domino effect on everyone below him in seniority. Thus, the PTFs lost ground by being moved farther away from an opportunity to be assigned a regular route. Because management experienced a problem in adjusting routes, the PTFs actually worked overtime during the grievance period. As a result, during the grievance period (October 31, 1989, to March 30, 1993), the PTFs did not lose any work hours as a result of the segmentation being assigned to the clerks and suffered no monetary loss. During the period covered by the grievance, the Tucker facility employed 37 carriers in the bargaining unit. This number includes the PTFs. David Hinesley was one of the PTFs in 1989 at Tucker, and on February 22, 1992, Hinesley transferred to the clerk craft at Tucker.

*B. Grievance Settled and Money Distributed*

About April 11 the Union settled the Tucker grievance on the basis that the Employer would pay \$800 per affected individual, up to 12 individuals, providing the Employer with a liability cap of \$9600. At step 4 of the grievance procedure (arbitration), the Union expanded its specified remedy to include all (adversely) affected carriers, not just PTFs. Selection of the 12 carriers most adversely affected was left to the local union. The matter was discussed at the Union's regular monthly meeting on Tuesday, April 12, although no vote was taken by membership concerning the 12. In effect, Union President Price, assisted by Steward Sharon Hall, and aided by the discussion of the members present respecting all unit carriers, selected the names of the 12 carriers. Price and Hall

testified that the names of Hinesley and the other three PTFs who transferred from the unit were mentioned and discussed. In their opinion, the ones selected were the 12 most adversely affected by loss of the segmentation work to the clerks during the grievance period of October 31, 1989, to March 30, 1993. The 12 were selected based on a checklist of four adversity factors: (1) loss of route; (2) denial of opportunity for appointment to full-time regular carrier status; (3) PTF carriers who did not get full-time work assignments during the grievance period; and (4) carriers whose routes were directly affected by the reassignment of segmentation work.

Using these four criteria, Price and Hall selected 12 carriers. Not among the 12 were Hinesley, Edward Minar, and two others (all PTFs at the time of the grievance) who had transferred out of the bargaining unit at some point during the grievance period. Of these four, Hinesley and Minar had transferred to the clerk craft at Tucker, and the other two had transferred away from Tucker. Union President Price testified that it was decided at the union meeting of April 12 that carriers who were still working in the unit were the ones most adversely affected. The parties stipulated that all 12 carriers selected to receive settlement checks are currently in the bargaining unit and were in the unit as of the settlement.

Of the 12 carriers selected, three were not PTFs, but unassigned regular carriers (regular carriers who do not have a scheduled route) and one, C. W. "Bill" Wallace, was a regular carrier. At the April 12 union meeting some of the officers and stewards (including Price), adversely affected to some degree during the grievance period, decided that they would be ineligible, by virtue of their official status, to participate in the settlement. Settlement checks issued during May to July.

At the next regular meeting (May 10) of the Union, Hinesley, who was not present on April 12, and Edward Minar, with support from some other union members, expressed the view that Hinesley and Minar should have been included in the settlement. Shop Steward Sharon Hall told them that the settlement was limited to 12 carriers. Union President Price ended the discussion by stating that nothing could be done because the grievance had been settled and that the matter was closed.

### C. Discussion

#### 1. Governing law

As the exclusive bargaining representative for Employer's Tucker employees, the Union owes all unit employees the duty of fair representation. *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65, 75-78 (1991); *Steelworkers v. Rawson*, 495 U.S. 362, 376 (1990); *Vaca v. Sipes*, 386 U.S. 171, 177 (1967); *Miranda Fuel Co.*, 140 NLRB 181 (1982). This duty extends to all functions of the bargaining representative, *O'Neill*, id. at 67, including contract administration, *Vaca*, id. at 196-197, and the distribution of proceeds from the settlement of a class action grievance, *Teamsters Local 101 (Alied Signal)*, 308 NLRB 140 (1992); *Steelworkers Local 2869 (Kaiser Steel Corp.)*, 239 NLRB 982 (1978).

"A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca*, 386 U.S. at 190. A wide range of reason-

ableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. *O'Neill*, 499 U.S. at 75. And any substantive examination of a union's performance must be "highly deferential." *O'Neill*, id. at 78. Thus, mere negligence does not constitute a breach of the duty of fair representation. *Rawson*, 495 U.S. at 376; *Le'Mon v. NLRB*, 952 F.2d 1203, 1205 (10th Cir. 1991). A union's conduct is arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a "wide range of reasonableness" as to be irrational. *O'Neill*, id. at 67.

#### 2. Analysis

The Government contends that the Union's conduct was arbitrary for several reasons. First, the Union selected 12 as a number. A counterpart to this is a second, that the 12 included persons who are outside the class on whose behalf (PTFs) the grievance was filed, while excluded from the 12 are individuals (PTFs) who were members of the class for at least part of the grievance period. Third, the four-part criteria test is arbitrary because it was unnecessary in that all the Union needed to do, since the class had a finite number, was to divide the proceeds equally among the members of the class.

The Government's argument, in part, overlooks certain important factors. First, the settlement was that the Employer would pay \$800 per affected carrier, up to 12 carriers. As the complaint does not attack the settlement, the number 12 was fixed by the settlement, and, therefore, beyond the reach of the local union to modify. Second, as Regional Administrative Assistant Charles Windham testified, at step 4 the Union modified the grievance to expand the requested remedy to cover all affected carriers. It therefore is irrelevant that the grievance, as filed, describes a class only of PTFs.

The Government has two additional contentions, somewhat overlapping, which are implied in the litigation. First, Charging Party David Hinesley was more deserving because he spent more time in the unit as a PTF during the grievance period than did some others, such as Henri Arscott. Whether Hinesley was more deserving because he actually suffered longer is not, by itself, a basis for liability because the Union is not required to achieve perfection in the performance of its duties. However, this factor overlaps the second implied contention, that the evidence demonstrates the Union acted in bad faith. That is, the Union selected the 12 in a manner which would, and did, reward employees who were in the bargaining unit at the time of the settlement. To make room among the 12 for 4 unit members, the Union excluded 4 (including Charging Party Hinesley) who had transferred from the unit even though, as the record shows, at least Hinesley had worked as a PTF more time in the unit during the grievance period than had some of those who were included.

The problem with this contention by the General Counsel is twofold. First, as noted earlier, PTF status is irrelevant because the Union expanded the remedial aspect at step 4 to include all carriers. Second, the evidence fails to show that Branch President Price exhibited any animus against Hinesley, Minar, or the other transferees either personally or because they no longer were in the unit. Moreover, the evidence fails to show that Price selected the 12, and excluded

Hinesley and the others, based on any arbitrary, capricious, or irrational reasons. The Union selected the 12 who, it believed, were the most adversely affected. Even if the record were to show that Price, as assisted by Union Steward Sharon Hall, selected someone who may have been somewhat less deserving than was Hinesley, for example, that lack of perfection in the selection process is well within the latitude and margin for honest error the Union has under the law. Accordingly, I shall dismiss the complaint.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction over the United States Postal Service pursuant to the Postal Reorganization Act, Section 1209.

2. National Association of Letter Carriers, Branch 6070, is a labor organization within the meaning of Section 2(5) of the Act.

3. By its April 1993 process of selecting 12 carriers or former carriers to receive, on an individually named basis, the proceeds from the settlement of a grievance against the United States Postal Service, and by not including Charging Party David Hinesley or others within the 12, Branch 6070 did not, as alleged, distribute the settlement proceeds in an arbitrary and capricious manner, and did not, as alleged, violate Section 8(b)(1)(A) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>4</sup>

#### ORDER

The complaint is dismissed.

---

<sup>4</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.